



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

**[MB Docket Nos. 18-92 and 17-105; FCC 19-33]**

**In the Matter of Channel Lineup Requirements; Modernization of Media Regulation Initiative**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this final rule document, we eliminate two unnecessary rules pertaining to cable operators' channel lineups. First, we eliminate the requirement that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. Second, we eliminate the requirement that certain cable operators make their channel lineup available through their Commission-hosted online public inspection file. We conclude that these requirements are unnecessary as channel lineups are readily available to consumers through a variety of other means. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Media Bureau, Policy Division, 202-418-2154, or email at [kim.matthews@fcc.gov](mailto:kim.matthews@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, FCC 19-33, adopted on April 12, 2019 and released on April 12, 2019. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY-

A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### Paperwork Reduction Act of 1995 Analysis

This Report and Order eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

#### Summary of Report and Order

1. As part of our Modernization of Media Regulation Initiative, last year we released a Notice of Proposed Rulemaking, Channel Lineup Requirements – Modernization of Media Regulation Initiative, Notice of Proposed Rulemaking, 83 FR 19033 (2018) (NPRM), tentatively concluding that the requirement in § 76.1705 that cable operators maintain a channel lineup locally is outdated and unnecessary and should be eliminated. In response, nearly all commenters agree that it is no longer necessary for cable operators to maintain channel lineup information at their local offices. Specifically, NCTA, ACA, and ITTA maintain that channel lineups are now available in numerous places, making the requirement to maintain a lineup locally unnecessary. Commenters also generally agree with our observation in the NPRM that few, if any, consumers interested in channel lineup information are likely to access this

information by visiting an operator's local office as other sources of channel lineup information can be viewed far more quickly and easily.

2. We adopt our tentative conclusion and eliminate § 76.1705. As discussed in the NPRM, this requirement was originally adopted nearly 50 years ago as part of the Commission's technical standard performance rules for cable. Among the Commission's goals in the 1972 Cable Order was to ensure that the "channels delivered to subscribers conform to the capability of the television broadcast receiver." While the Commission did not explain in its order exactly why it believed it was necessary for a system to maintain at its local office a list of the channels it delivers, it appears that the requirement was intended to help the Commission verify compliance with technical performance standards that applied to certain cable channels at that time.

3. Regardless of the original purpose of the requirement to maintain a channel lineup locally, we conclude that the requirement is no longer necessary as information about the channel lineups of individual cable operators is available today through other sources including, in many cases, the operator's own website, on-screen electronic program guides, and paper guides. These sources are more readily and easily accessible to consumers and others than the operator's local office. In addition, as we noted in the NPRM, § 76.1602(b) of the Commission's rules separately requires cable operators to provide information to subscribers regarding the "channel positions of programming carried on the system" and "products and services offered" at the time of installation, at least annually, and at any time upon request. Thus, channel lineup information is actively sent to cable subscribers at least once a year and is required to be made available upon request at any time. Moreover, as several commenters point out, cable operators have strong economic incentives to ensure that channel lineup information reaches both existing and prospective customers so that they can better compete in the video marketplace.

Commenters note that customers have a choice of MVPDs and not making this information easily available would almost certainly result in the loss of potential and existing customers.

4. Thus, we conclude that because channel lineup information is available from many sources today and operators have an incentive to ensure that this information is widely disseminated, the burden imposed by § 76.1705 is unnecessary, and it is appropriate to eliminate this regulation. In reaching this conclusion, we disagree with CCTV that cable operators should continue to be required to provide channel lineups at local offices because PEG channels and program details may not be included in cable operators' electronic program guides. First, we note that our rules do not require cable operators to provide "program details" in their channel lineups, so our action today will have no impact on the dissemination of program details by operators. Moreover, there is no evidence in the record that the channel lineup information in an operator's local office would be different from that in an electronic program guide or that members of the public visit operators' local offices to obtain channel lineups in order to see which channels are PEG channels. Thus, retaining § 76.1705 would not assure that information regarding PEG channels would be made available in a manner that would satisfy CCTV or produce any meaningful benefit.

5. We also eliminate the requirement in § 76.1700(a)(4) of our rules that cable operators make channel lineup information available for public inspection through the online public file hosted by the Commission. Similar to our determination with respect to § 76.1705, we conclude that the requirement in § 76.1700(a)(4) is unnecessary in light of the widespread availability of channel lineup information from other sources that are more likely to be accessed by customers and others seeking this information.

6. As discussed in the NPRM, in 2016, the Commission expanded the list of entities required to maintain an online public file to include, among others, operators of cable systems

with at least 1000 subscribers. In the Expanded Online Public File Order, Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, Report and Order, 81 FR 10105 (2016), the Commission required cable operators subject to the online file requirement to comply with § 76.1700(a)(4) either by uploading to the online public file information regarding their current channel lineup, and keeping the information up-to-date, or by providing a link in the online file to the channel lineup maintained by the operator at another online location. In the NPRM in this proceeding, we invited comment on whether we should eliminate the requirement that cable operators make channel lineup information available via the online public file on the ground that consumers have multiple other sources of information about a cable system's current channel lineup. Commenters in favor of eliminating the rule argue generally that channel lineup information is available today from multiple other sources, making the rule unnecessary. Those opposed to eliminating the rule argue generally that it helps ensure that broadcasters and regulators as well as consumers have access to accurate and up-to-date channel lineup information.

7. We agree with NCTA, ACA, and ITTA that, because it is now easy to access channel lineup information from company websites, on-screen electronic program guides, and paper guides, it is unnecessary to require cable operators to also make channel lineup information available via the online public file. We agree with these commenters that consumers seeking channel lineup information are more likely to look first to these alternate sources of information rather than the Commission's online public file database. It is most likely that current subscribers would first access their cable operator's electronic program guide or website to obtain channel lineup information. Prospective customers also are more likely to look first to a cable provider's website to determine what channels it delivers. In addition, as noted above, operators are also required to make channel lineup information available upon request.

Moreover, we note that DBS providers are not currently required to post channel lineup information in their online files. Thus, eliminating § 76.1700(a)(4) will establish regulatory parity between cable operators and DBS providers with respect to channel lineup information. We note that no commenter argues that it is difficult to access channel lineup information for DBS providers or for cable systems with fewer than 1,000 subscribers which are not required to maintain an online public file. Although we note that some commenters, including local regulators, broadcasters, and an organization representing PEG channels urge us to retain this online public file requirement, we find that channel lineup information can just as easily be accessed through other online means such as the cable operator's or a third-party website.

8. We disagree with NAB that other sources of channel lineup information are not an adequate substitute for the requirement that channel lineups be placed in the online public file. As discussed above, we believe that channel lineup information is easily accessible to the public, broadcasters, and regulators via the cable operator's own website or a third-party site. We also disagree with those commenters who argue that alternate sources of channel lineup information are less likely to be up-to-date than the information in the online public file. In fact, many cable operators currently elect to include a link in the online file to the channel lineup they maintain online elsewhere. Thus, for these operators the information available via the operator's website or another website is the same as that in the online file. We also believe that all cable operators have a marketplace incentive to ensure that the channel lineup information they disseminate to the public is accurate, making a regulatory mandate unnecessary.

9. Two commenters claim that channel lineups maintained online by cable operators do not provide accurate and complete listings with respect to PEG channels. Commenters further argue that cable operators commonly do not include information about PEG channels in electronic program guides. However, we have reviewed the weblinks provided by ACM and, like ACA,

we did not detect any omissions of PEG channel listings. Moreover, we note there is no evidence in the record that the channel lineups maintained in operators' online public files differ from those on the operators' own websites, third-party websites, or in electronic program guides. With regard to the claim that PEG program information is lacking in the operators' websites or electronic program guides, as stated above, our rules do not require program information be included alongside the channel listings with regard to *any* channels. We agree with ACA that cable operators have an economic incentive to provide complete and accurate channel listings, including PEG channels. Cable operators incur costs related to carrying every channel and would have no incentive to fail to provide complete information regarding the channels they deliver.

## **PROCEDURAL MATTERS**

### **A. Final Regulatory Flexibility Analysis**

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the NPRM, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### **1. Need for, and Objectives of, the Report and Order**

11. In this *Report and Order*, we eliminate our rules requiring cable operators to maintain copies of their channel lineups. First, we eliminate § 76.1705, which requires cable operators to maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. Second, we eliminate the requirement in § 76.1700(a)(4) that certain cable operators make their channel lineup available through their Commission-hosted online public inspection file. We conclude that these requirements are unnecessary as channel

lineups are readily available to consumers and others through a variety of other sources including, in many cases, the operator's own website, third-party websites, on-screen electronic program guides, and paper guides. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

**2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

12. No comments were filed in response to the IRFA.

**3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply**

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

14. Cable Companies and Systems (Rate Regulation Standard). The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but nine of the 4,600 cable operators active nationwide are small under the 400,000 subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Of the 4,600 active cable systems nationwide, we estimate that approximately 3,900



percent have 15,000 or fewer subscribers, and 700 have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

15. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable systems operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

16. The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for all cable operators, including small entities. Specifically, cable operators will no longer be required to maintain a listing of the channels delivered by the system at their local office, and systems with more than 1,000 subscribers will no longer be required to make their channel lineup available through their Commission-hosted online public inspection file.

**5. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

18. The Commission considered but ultimately declined to impose new public file requirements on cable systems with fewer than 1,000 subscribers. Such systems have always been exempt from online public file requirements but must maintain local public inspection files. In addition, these smaller cable operators are currently subject to the requirement in § 76.1705, being eliminated in this Report and Order, that they maintain a copy of their current channel lineup locally. In the NPRM, we asked whether, if we eliminate § 76.1705, there will continue to be adequate access to information about the channels delivered by smaller cable systems and whether we should require them to continue to make channel lineup information available locally or make it available online. Consistent with our conclusions regarding larger cable systems, the Commission concluded in the Report and Order that operators of smaller systems also routinely make their channel lineups available through other sources and have an economic incentive to ensure that information about their channel lineups is accurate, complete, and widely disseminated. Accordingly, the Commission concludes that no new regulatory mandates with respect to channel lineup information are necessary to ensure that adequate information is available regarding the channels delivered by these smaller cable systems.

19. Overall, we believe the *Report and Order* appropriately balances the interests of the public against the interests of the entities who are subject to the rules, including those that are small entities.

**6. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule**

20. None.

**B. Paperwork Reduction Act Analysis**

21. This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. 3501-3520. In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

**C. Congressional Review Act**

22. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**ORDERING CLAUSES**

23. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 601, and 624(e) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 521, and 544(e), the Report and Order IS ADOPTED.

24. IT IS FURTHER ORDERED that the Commission’s rules ARE HEREBY AMENDED as set forth in the Final Rules, effective as of the date of publication of a summary in the Federal Register.

25. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order,

including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

26. IT IS FURTHER ORDERED that the Commission will send a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

27. IT IS FURTHER ORDERED that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-92 SHALL BE TERMINATED and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

**List of Subjects in 47 CFR Part 76**

Cable television, Recording and recordkeeping requirements.

Marlene Dortch,  
Secretary.

## Final Rules

For reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 76 to read as follows:

### **PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

1. The authority citation for part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

#### **§ 76.1700 [Amended]**

2. Amend §76.1700 by removing and reserving paragraph (a)(4).

#### **§ 76.1705 [Removed and Reserved]**

3. Remove and reserve §76.1705.

[FR Doc. 2019-08756 Filed: 4/30/2019 8:45 am; Publication Date: 5/1/2019]